

Mark B. McFeeley
Chief Judge
Albuquerque, NM

On behalf of the United States Bankruptcy Appellate Panel of the Tenth Circuit (BAP), I am pleased to provide this report on our fifth full year of operation.

The number of bankruptcy appeals in all participating BAP districts remained approximately the same as 2000. Notwithstanding this, filings with the BAP increased by 16%. The number of appellants electing to proceed before the BAP increased to 70% as compared to 58% in 2000. Through the end of 2001, 53 BAP decisions have been appealed to the Tenth Circuit Court of Appeals. Of these, 45 have been concluded. Twenty-one were decided on the merits and affirmed the decision of the BAP; the remaining 24 were dismissed. For the fifth year, the judges of the BAP have achieved their goal of disposing of most appeals within 60 days from submission, with a 2001 median “submission to disposition” time of 36 days. The time span from the date the notice of appeal was filed with the Bankruptcy Court to the date the BAP entered a final judgment averaged 149 days.

As with last year, this year again brought major changes to the composition of the panel. With the December appointment of the Honorable Julie A. Robinson to the District Court for the District of Kansas, the BAP lost another of its founding members. At the same time, the announcement was made of the nomination of the Honorable Marcia S. Krieger to the District Court for the District of Colorado. While I am honored to congratulate both of them on their achievements, we will miss their contributions to the BAP. The district courts in the Tenth Circuit have gained two excellent jurists. We wish them the best in their future endeavors.

During the spring, the BAP Local Rules of Practice Committee (Rules Committee) began the mission of revising the BAP rules. In June, the Rules Committee met in Denver, Colorado, and recommended that significant changes be made to the Local Rules of the BAP. The Rules Committee undertook the tremendous task of streamlining the process by which an appeal is prosecuted before the BAP; eliminating rules or parts of rules that duplicate the Federal Rules of Bankruptcy Procedure; conforming the rules to the style manual *Guidelines for Drafting and Editing Court Rules*, by Bryan A. Garner; eliminating all BAP forms; and eliminating the incorporation by reference of the Federal Rules of Appellate Procedure. By November, proposed amendments were circulated for public notice and comment. Receiving public comments is an important part of the rule making process, and I would like to

thank everyone who participated in this process. I would also like to thank the Rules Committee members and the bankruptcy practitioners who served on the Rules Committee, G. Blaine Schwabe, III, of Oklahoma City, Oklahoma, and Steven J. McCardell, of Salt Lake City, Utah.

In 1996, the Committee on Judicial Resources (JRC) asked the Administrative Office to provide an analysis of the BAP and a report on the extent to which a BAP judge's current staff resources can meet the needs of the BAP. Action on the subject of legal resources for the BAP was tabled until the year 2000. As a result, BAPs nationally have operated without adequate law clerk resources, with the exception of the Ninth Circuit BAP. In February of 2000, the Chief Judges and Clerks of the BAPs met in Washington, D.C. to discuss the development of a national formula for the allocation of BAP law clerks. Also present were representatives from the JRC, the Appellate Court Administration Division, and the Bankruptcy Judges Division. The meeting resulted in the recommendation of a proposed national BAP law clerk formula. At its September 2001 session, the JRC considered the recommendation and approved a modified version. In Fiscal Year 2000, the BAPs were authorized to hire new law clerks up to the approved staffing allocation. Chief Judge Tacha was instrumental in the success of this endeavor.

The BAP Clerk's Office has relocated several times since its inception. During the initial three-year evaluation period of the BAP, the BAP Clerk's Office occupied temporary space borrowed from the Court of Appeals Clerk's Office. In 1999, after the permanent establishment of the BAP, the BAP Clerk's Office borrowed space from the Circuit and relocated to larger quarters in the Byron White U.S. Courthouse. In anticipation of a new Circuit Court judge, the Circuit evaluated its space and facilities needs and determined that they were outgrowing the Courthouse. In the fall of 2000, the BAP Clerk's Office faced yet another move, and Chief Judge Tacha graciously volunteered assistance in obtaining space in a commercial building. Under her direction, staff of the Office of the Circuit Executive began the procurement process for leasing space. Other staff members began the solicitation process for data management and telephone equipment. And still other staff assisted with the layout and design of the space. With considerable assistance from the staff of the Office of the Circuit Executive, the BAP Clerk's Office has now successfully relocated to commercial office space.

During the past year, the BAP Clerk's Office initiated a program designed to evaluate the service and support they provide to chambers, court staff, the bar, and the public. They began the process with the BAP judges and their staff, using conference calls as an interactive method of gathering data. The BAP Clerk's Office summarized the comments and suggestions and made

recommendations for changes to existing practice. The process was repeated with staff from the Bankruptcy Courts within the Tenth Circuit, and we appreciate each Court's willingness to participate in this customer service survey. The next steps involve obtaining input from the bankruptcy bar and other Circuit Court units. The goal of the BAP Clerk's Office is to provide the highest quality of service and support to Chambers, court staff, the bar, and the public.

When Judge Tacha began her tenure as the Chief Judge, she met with the staff of each Circuit Court unit. The purpose of the visit was to acquaint herself with the operations and people of each unit and to establish certain core principals and values. Chief Judge Tacha stressed the importance of developing and enhancing the working relationship between the Court and the bar. To this end, the continuing education of the bankruptcy bar remains an important focus of the BAP. The BAP continues to explore and develop methods of disseminating information throughout the Circuit and nationally. The BAP Clerk's Office prepared resource materials and step-by-step instructions and have distributed them to attorneys and to Bankruptcy Courts to be placed at their public counters. The panel judges and the BAP Clerk's Office staff continue to participate in continuing legal education seminars and informal educational sessions for the bankruptcy bar.

In closing, I must again acknowledge that the accomplishments of the BAP would not have been made without the considerable assistance and support of my colleagues, of the judges of the Tenth Circuit Court of Appeals, the Office of the Circuit Executive, the Tenth Circuit Clerk's Office, and the District and Bankruptcy Court Judges and Clerks' Offices. As always, their advice and support are very much appreciated.